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Case Summary of *Corner Brook (City) v Bailey*

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The Supreme Court of Canada's recent decision in *Corner Brook (City) v Bailey*[2] provides much-needed clarity on the law of contractual interpretation in relation to releases. This area of law is an important one, given the prevalence of disputes that settle rather than continue to the judicial process. The interpretation of releases was highly complex, given that these instruments determine a party's ability to sue in the future and that the possible use of evidence from negotiations was long unclear. Yet, as the final section of this summary notes, *Bailey* leaves some questions to be answered vis-à-vis the admissibility of negotiations as part of the surrounding circumstances in contractual disputes – a contentious question in the world of contractual interpretation.

A. The Facts

In this case, Mary Bailey struck David Temple with her husband's car.[3] Mr. Temple, an employee of the City of Corner Brook, sued Mrs. Bailey.[4] Mrs. Bailey, in another action, sued the City.[5] In the context of the latter action, the City and Mrs. Bailey settled. The result of this settlement was a release, by which Mrs. Bailey released the City from liability relating to the car accident.[6] She discontinued her action against the City.[7] Numerous years later, Mrs. Bailey instituted a third-party claim against the City for contribution or indemnity in the action that Mr. Temple brought against her.[8] The issue in this case was whether the above-noted release barred Mrs. Bailey's third-party claim against the City in this action.[9] On the one hand, Mrs. Bailey argued that her third-party claim should not be barred. On the other, the City argued that it was.[10]

B. The Decisions Below

(a) Supreme Court of Newfoundland and Labrador[11]

At first instance, Murphy J found that the released did bar Mrs. Bailey's third-party claim against the City.[12] As a result, he stayed the claim.[13] In making this determination, Murphy J emphasized

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[2] 2021 SCC 29 [*Bailey*].
[3] *Ibid* at para 5.
[4] *Ibid* at para 6.
[5] *Ibid* at para 5.
[6] *Ibid* at para 7.
[7] *Ibid.*
[8] *Ibid* at para 8.
[9] *Ibid* at paras 15ff.
[10] *Ibid.*
[11] 2018 NLSC 177.
[12] *Bailey, supra* note 2 at para 10.
[13] *Ibid.*

that, in interpreting releases, judges must ascertain the parties' intention.[14] To do so, they must first assess the words written in the release. Judges may also assess the factual matrix and context in which the parties signed the release in interpreting the language of the release.[15] Above all, Murphy J found that the interpretation of releases must be conducted from an objective perspective.[16] In this case, the release covered Mrs. Bailey's third-party claim; however, in applying the traditional Blackmore Rule, Murphy J considered what the parties contemplated when they signed the release, in addition to the specific context in which it was signed.[17] In particular, Murphy J observed that Mrs. Bailey had already been served with the Temple action when she signed the release with the City.[18] This – in addition to the parties' correspondence – indicated that she knew the facts underlying the third-party claim when she signed the release.[19] As such, Murphy J concluded that the parties contemplated any and all kinds of claims in relation to the car accident.[20]

(b) Court of Appeal of Newfoundland and Labrador[21]

The Court of Appeal of Newfoundland and Labrador unanimously allowed the appeal on the basis that the Blackmore Rule was subsumed into the principles of contractual interpretation as set out in *Sattva Capital Corp v Creston Moly Corp* and *Ledcore Construction Ltd v Northbridge Indemnity Insurance Co.*[22] The Court of Appeal found that Murphy J made three extricable errors of law in holding that: (1) what was in the parties' contemplation was determinative of mutual intent; (2) it unnecessary to determine what was "specially" in their contemplation; and (3) it was sufficient that the release's broad and general wording covered the third-party claim when the surrounding circumstances actually suggested otherwise.[23] As a result, the Court of Appeal reviewed Murphy J's decision on a correctness standard.[24] It found that the broad language included in the release should be considered in light of the specific references to the Bailey Action, and that the pre-contract exchange of correspondence did not refer to the Temple action or any third-party actions.[25] The Court of Appeal reinstated the third-party notice, finding that the language of the release, its factual matrix, and the exchange of correspondence between the parties indicated that the release should be interpreted as only applying to the Baileys' claims in the Bailey Action.[26]

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[14] *Ibid.*
[15] *Ibid.*
[16] *Ibid.*
[17] *Ibid* at para 11.
[18] *Ibid.*
[19] *Ibid.*
[20] *Ibid.*
[21] 2020 NLCA 3 [*Bailey*, NLCA].
[22] *Ibid* at para 12.
[23] *Ibid* at para 13.
[24] *Ibid.*
[25] *Ibid.*
[26] *Ibid.*

C. The Decision at the Supreme Court of Canada

Rowe J, writing for the Court, reviewed the law governing the interpretation of releases. Notably, he determined that the Blackmore Rule should no longer be referred to because its function has been "subsumed entirely by the approach set out in *Sattva*."[27] Briefly, and to provide context, the Blackmore Rule established that contractual releases were to be interpreted narrowly to apply to the specific dispute that the parties contemplated when forming the contract. This Rule originated in *London and South Western Railway v. Blackmore*, in which the parties settled a dispute with wording that, on its face, released all claims, even if they were not related to the impugned dispute.[28] Later on, a significant claim arose and the House of Lords found that the general words in a release had to be limited to things that were specifically in the parties' contemplation at the time of formation. The Supreme Court's decision confirms Canadian contract law's uniform understanding of contractual interpretation, consistent with the Supreme Court's statement in *Sattva* that "the interpretation of contracts has evolved towards a practical, common-sense approach not dominated by technical rules of construction."[29] As a result, the rule now applicable in Canadian contract law is that "there is no special rule of contractual interpretation that applies only to releases."[30] This finding will provide significant guidance not only to the courts in interpreting the language of releases, but also to parties drafting releases to "wipe the slate clean."[31]

(a) A Release Should be Interpreted in Accordance with Sattva

Rowe J emphasized that a release is a contract and that the general principles of contractual interpretation accordingly apply.[32] The Blackmore Rule, albeit a seminal principle of contract law, has now been overtaken by the rule that "factual context is considered in interpreting contracts."[33] Rowe J emphasized that the Blackmore rule is "entirely consistent with the law of contractual interpretation generally."[34] As such, judges deciding disputes in relation to the scope of releases must assess the surrounding circumstances that the parties knew about at the time of the contract in interpreting the release's language.[35]

(b) Judicial Tendencies to Interpret Releases Narrowly Are a Function of Releases Themselves

Rowe J also noted the tension between the text and context of contracts, which is heightened in the interpretation of releases:

> Sometimes the ordinary meaning of the words and the surrounding circumstances come into tension, and courts must decide whether to rely on the surrounding

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[27] *Ibid* at para 33.
[28] (1870) LR 4 HL 60 [*Blackmore*].
[29] *Bailey*, NLCA, *supra* note 21 at para 34.
[30] *Ibid*.
[31] *Ibid* at para 27.
[32] *Ibid* at para 28.
[33] *Ibid* at para 23.
[34] *Ibid* at para 28.
[35] *Ibid* at para 20.

> circumstances to refine the words, or whether doing so would impermissibly overwhelm the words of the agreement, in which case the words must override.[36]

In assessing this interpretative challenge, Rowe J discussed two key tensions that are important to keep in mind. First, releases are unique in that they tend to be expressed in the broadest terms possible.[37] If applied literally, the release "could prevent the releasor from suing the releasee for any reason, forever."[38] For this reason, Rowe J emphasized that a judicial consideration of the context of the dispute is key to the interpretive exercise: "this context can serve as a limiting factor to the breadth of wording found in a release."[39]

Second, Rowe J noted the key challenge underlying releases – namely, that the parties often must account for risks that are unknown at the time of negotiating the contract.[40] Given this difficulty, he noted that releases often "lead to dissonance between the words of the agreement on their face and what the parties seem to have objectively intended based on the surrounding circumstances."[41] Rowe J found that, where courts interpret releases in a narrower manner than in other kinds of contracts, it is because the broad language typically used in releases can conflict with the factual matrix, especially where the claim was not in the parties' contemplation at the time of the release.[42]

A practical takeaway from *Bailey* is that parties need not use excessive verbiage.[43] Rather, they should make the language as clear as possible to indicate the scope of the release and whether it will apply to unknown claims and whether the claims must be connected to a particular area or subject matter.[44] Rowe J further noted that "releases that are narrowed to a particular time frame or subject matter are less likely to give rise to tension between the words and what the surrounding circumstances indicate the parties objectively intended."[45]

In finding that the Court of Appeal erred in its review of Murphy J's decision (specifically, two of the three extricable errors of law that it identified were actually questions of law and fact), Rowe J found no reviewable error in the conclusion that the release covered Mrs. Bailey's third-party claims against the City.[46] He noted that the parties should not have to provide "every type of claim imaginable one by one" and that "there is no principled reason to require parties to particularize the scope of the release in this fashion."[47]

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[36] *Ibid* at para 35.
[37] *Ibid* at para 36.
[38] *Ibid.*
[39] *Ibid.*
[40] *Ibid* at para 37.
[41] *Ibid.*
[42] *Ibid* at para 38.
[43] *Ibid* at para 41.
[44] *Ibid.*
[45] *Ibid.*
[46] *Ibid* at para 51.
[47] *Ibid.*

D. Concluding Thoughts and Future Questions about the Admissibility of Contract Negotiations

Overall, *Bailey* injects clarity into the law pertaining to releases in Canadian contract law. Parties no longer must look to the Blackmore Rule, given that releases are now firmly considered to fall within the purview of *Sattva*. Looking ahead, questions persist about the admissibility of contract negotiations in contractual interpretation disputes and whether the factual matrix should include evidence of negotiations. On the one hand, reviewing such evidence could chill the parties' communications during negotiations. On the other hand, despite the dangers involved, evidence of negotiations could be useful to resolve ambiguities and support inferences concerning the parties' intentions at the time that they made their agreement. While Rowe J acknowledged the longstanding rule that such evidence is inadmissible, he acknowledged the tension between this rule and the need to consider the factual matrix in interpreting contracts.[48] Should negotiations be firmly considered part of the factual matrix in this analytical exercise? This question is one left for another day…

[48] *Ibid* at para 56.